

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BROWN, et al.,

Plaintiffs,

Case No. 06-12485

v.

Honorable Patrick J. Duggan

JENNIFER GRANHOLM, et al.,

Defendants.

AMENDED ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan on January 11, 2006.

This is a civil rights action filed under 42 U.S.C. § 1983 and § 1985 by multiple plaintiffs who are in the custody of the Michigan Department of Corrections. On June 2, 2006, one of the named plaintiffs, Raleem-X, filed a “Motion to Issue Order for Plaintiffs to Proceed *In Forma Pauperis* and to Divide Fees Proportionately,” requesting that the Court grant the plaintiffs *in forma pauperis* status and provide each plaintiff thirty (30) days within which to submit an individual motion to proceed *in form pauperis*. The Court declined to waive prepayment of the filing fees before plaintiffs each requested *in forma pauperis* status. Instead, the Court directed each plaintiff desiring to participate in this lawsuit to submit within thirty (30) days an “Application for Prisoner to Proceed Without Prepayment of Fees or Costs.” *See* Court’s Order dated 7/21/06. The Court granted one extension of time for filing the application.

On December 20, 2006, this Court issued an Order dismissing without prejudice seven plaintiffs for failing to file an “Application for Prisoner to Proceed Without Prepayment of Fees or Costs.” One of the plaintiffs dismissed for failure to file the required application was Jeffrey Carney. Subsequently, on January 8, 2007, the Court received a letter dated January 4, 2007 from Plaintiff Carney.

In his letter, Plaintiff Carney indicates that he sent the required application on July 26, 2006, which was apparently not filed due to an unidentified administrative error.

Plaintiff Carney also attached the following documents to his letter:

1. A July 25, 2006 letter to Cy Frontier requesting an account statement to be submitted with his Application to Proceed Without Prepayment of Prepayment of Fees and Costs, which contains Mr. Frontier’s reply, also dated July 25, 2006, written on the bottom of the letter;
2. A July 26, 2006 Michigan Department of Corrections Disbursement Authorization (Expedited Legal Mail – Prisoner) stating that mail was sent to this Court on July 26, 2006;
3. A July 26, 2006 cover letter addressed to this Court from Plaintiff Carney stating that his Application to Proceed Without Prepayment of Fees and Costs was attached and requesting that the Court file his application;
4. Plaintiff Carney’s Application to Proceed Without Prepayment of Fees and Costs and Authorization to Withdraw Funds From Trust Fund Account dated July 26, 2006;
5. A Certificate of Prisoner Institutional/Trust Fund Account Activity for Plaintiff Carney signed by Mr. Frontier and dated December 27, 2006; and
6. Plaintiff Carney’s Michigan Department of Corrections Trust Fund Account Statement for the period of June 27, 2006 to December 27, 2006.

See Docket No. 19.

This Court believes that reinstating Plaintiff Jeffery Carney is warranted pursuant

to Federal Rule of Civil Procedure 60(b). Rule 60(b) states in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of the judgment.

FED. R. CIV. P. 60(b). But for the unidentified administrative error that prevented this Court from receiving Mr. Carney's application, it would have been timely filed. This mistake warrants the reinstatement of Plaintiff Carney. Thus, the Court amends its December 20, 2006 Order and directs the Clerk to reinstate Plaintiff Jeffery Carney as a party to this action.

Reinstating Plaintiff Carney requires a recalculation of the fees owed by the remaining Plaintiffs. As stated in the December 20, 2006 Order, the remaining plaintiffs must pay the full filing fee for this civil action. 28 U.S.C. 1915(b)(1). Each prisoner is proportionally liable for any fees and costs that may be assessed. *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138 (6th Cir. 1997). Thus, any fees and costs for this action must be equally divided among the six remaining plaintiffs. *Id.* Accordingly, each plaintiff is liable for \$58.33 of the \$350.00 filing fee. Plaintiffs Reeves and Percival each must submit \$58.33 to this Court within thirty (30) days from the date of the December 20, 2006 Order.¹ Failure to do so will result in the dismissal of Plaintiffs Reeves and

¹The Court notes that, as of the time of this Order, neither Plaintiff Reeves or Percival has submitted the previously calculated amount of \$70.00 as set forth in this Court's December 20, 2006 Order. Any payment that exceeds the recalculated amount made by Plaintiffs Reeves and Percival before this Order is issued and received will be returned.

Percival.

The Court must assess and, if funds exist, collect from the remaining four plaintiffs' accounts an initial partial filing fee, consisting of twenty percent (20%) of the greater of: (1) the average monthly deposits to each plaintiff's account, or (2) the average monthly balance in each plaintiff's account for the preceding six (6) months. 28 U.S.C. § 1915(b). The initial partial filing fee for Andre Coleman is \$0.00. The initial partial filing fee for Ron Denham is \$0.00. The initial partial filing fee for Jeffery Carney is \$0.00. The initial partial filing fee for Raleem-X, a/k/a Curtis Fuller, is \$1.00. After plaintiffs pay their initial partial filing fees, each plaintiff is equally and separately liable for the proportional total sum of \$58.33, and they must make monthly payments of twenty percent (20%) of the preceding month's income credited to their accounts until the total sum of \$58.33 has been paid. 28 U.S.C. § 1915(b)(2).

If plaintiffs Reeves and Percival fail to pay the \$58.33 filing fee within thirty days from the date of this Court's December 20, 2006 Order, each remaining plaintiff will be responsible for a recalculated, proportionate share of the full filing fee. If plaintiffs Reeves and Percival do not prepay the filing fee, the Court will issue an Amended Order holding each remaining Plaintiff liable for his recalculated, proportionate share of the full filing fee.

Accordingly, the Court **GRANTS** Plaintiff Carney's request to be reinstated in this action and **ORDERS** the agency having custody of plaintiffs Coleman, Denham, Carney, and Raleem-X to: (1) withdraw or set aside the initial partial filing fee from plaintiffs'

trust fund accounts; (2) forward this amount to the Clerk of this Court within thirty (30) days of the date of this order; and (3) in subsequent months, or from time to time, forward payments of twenty percent (20%) of the preceding month's income credited to plaintiffs' accounts to the Clerk of this Court **until each plaintiff has paid his individual and total sum of \$58.33 to complete the entire filing fee of \$350.00.** The Court will notify the agency having custody of plaintiffs when plaintiffs have paid the entire filing fee.

With the exception of the reinstatement of Mr. Carney and the recalculated proportion of the filing fee owed by the remaining plaintiffs, the Court's December 20, 2006 Order stands.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Dated:

Copies to:
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Marquette, MI 49855

Ron Denham
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Ionia Maximum Correctional Facility
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Fred Reeves
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Leon Percival
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Jeffery Carney
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Raleem-X, a/k/a Curtis Fuller
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